IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.(NPD).No.1850 of 2003 and C.R.P.(NPD).No.1851 of 2003
and
C.M.P.Nos.19524 of 2003

1. Ravichandran
2. Palanichamy
3. Vasantha
4. Selvi
5. Nagarathinam .. Petitioners in
CRP 1850 of 2003

-Vs-

1. Natarajan Nadar
2. Rajammal
3. Pankajam
4. Mamundi
5. Nagarajan
6. Prabhakaran
7. Kanchana
8. Padmanaban .. Respondents in
CRP 1850 of 2003

1. M.Palanichamy
2. M.Ravichandran
3. Nagarathinam
4. Vasantha
5. Tamizh Selvi .. Petitioners in
CRP 1851 of 2003

vs

Natarajan Nadar .. Respondent in
CRP 1851 of 2003

These civil revision petitions are filed under Sec.25 of the Tamilnadu Buildings (Lease and Rent Control) Act 18/1960 as amended Act 23/1 973 as amended Act 1/1980 against the judgments and decrees passed in R.C.A.Nos.24 of 1999 and 23 of 1999 dated 21.2.2003 on the file of the Rent Control Appellate Authority, Principal Subordinate Judge, Dindigul, reversing the fair and decreetal orders passed in R.C.O.P.Nos.11 of 1989 and 85 of 1 988 dated 20.8.1999 on the file of the Rent Controller (Principal District Munsif),

Dindigul.

!For Petitioners : Mr.R.Nandakumar

^For Respondents : Mr.N.S.Varadachari
for R1-Caveator

:COMMON ORDER

C.R.P.No.1850 of 2003 has arisen from the judgment of the Rent Control Appellate Authority, Dindigul, made in R.C.A.No.24 of 1999 setting aside the order of the Rent Controller, wherein the petition filed by the landlord, the first respondent herein in R.C.O.P.No.11 of 1989 under Sections 1 0(2) and 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent Control) Act to evict the tenant was dismissed, while the second revision in C.R.P. No.1851 of 2003 has arisen from the judgment of the Appellate Authority made in R.C.A.No.23 of 1999 reversing the order of the Rent Controller wherein the petition filed by the tenant in R.C.O.P.No.85 of 1988 under Sec.8(5) of the Act to deposit the monthly rental in Court was allowed.
2. The parties hereinafter will be referred to as petitioner and respondents 1 and 2 as arrayed in R.C.O.P.No.11 of 1989.

3. One Manickam Chettiar, the second respondent alleging that he was a tenant under the petitioner landlord; that when lawful tenders were made of the rent directly and through money order, they were refused by the landlord, and hence, there arose a necessity to deposit the rental in Court, filed R.C.O.P.No.85 of 1988. The same was contested by the petitioner landlord stating that he was not a tenant under him; but, the property was leased out to one Ruthri Chettiar, the first respondent, under whom he was a subtenant.

4. Demanding eviction, the landlord filed R.C.O.P.No.11 of 19 89 alleging that that the property fell to his share in the family partition, which took place in the year 1986; that in the year 1974, the first respondent took the property on lease for conducting his nut stall; that subsequent to the partition, the first respondent recognizing the ownership of the landlord, was paying the rental of Rs.150/- per month; that while so, he sublet the property to the second respondent; that the landlord is running his grocery shop in a rented premises, and thus, he is in need of the petition mentioned premises; that he issued a legal notice on 16.7.88 to both the respondents; that the first respondent, despite service, has not issued any reply; and that the second respondent issued a reply notice containing false allegations, and hence, the petition has to be allowed. The first respondent contested the application stating that he originally took on lease the premises which was subsequently divided into three parts; that they were assigned with door Nos.187, 188 and 189; that he was originally paying the monthly rental at Rs.70/- and thereafter, the enhanced monthly rental of Rs.90/-, and now, he is paying Rs.150/- per month; that he retained Door No.189 and delivered possession to the landlord in respect of Door Nos.187 and 188; that therefrom, he had no connection to the premises situated in Door Nos.187 and 188; that the landlord leased out the property to the second respondent, and there was no sublease, and so, he was not a necessary party to the proceedings. The

application was contested by the second respondent stating that he has denied the sub tenancy; that he has directly taken the property on lease; that he has been paying the rental; that it is not correct to state that the landlord required the premises for his personal occupation; that it has been only for the purpose of raising the rental; that in order to protect his right, after sending the rental through money order, he has filed RCOP No.8 5/88 for depositing the rental arrears, and hence, the petition was to be dismissed.

5. The learned Rent Controller, after enquiry, allowed R.C.O.P.No.85 of 1988 while dismissed R.C.O.P.No.11 of 1989. Aggrieved petitioner landlord preferred two appeals in R.C.A.Nos.23 and 24 of 1999. The learned Rent Control Appellate Authority on enquiry allowed both the appeals and reversed the finding recorded by the Rent Controller. Aggrieved revision petitioners have brought forth these revisions.

6. During the pendency of the proceedings in RCOP 11/89, both the first and second respondents died, and the respondents 3 to 9, the legal representatives of the deceased first respondent and the respondents 10 to 15, the legal representatives of the deceased second respondent were added.

7. At the time of admission, the Court heard the learned Counsel for the revision petitioners and the respondents also.

8. Admittedly, the non-residential premises in question, originally belonged to one Subramanya Nadar, and pursuant to the partition that took place in the family, the same was allotted to the landlord. The case of the petitioner landlord is that the first respondent has sublet the property to the second respondent, which fact was denied by both the respondents. However, the second respondent has admitted the ownership of the landlord. But, the contention of the landlord that the second respondent has been a tenant of the landlord is denied by him. It is the case of the landlord that the second respondent was inducted into the property on sublease. It is pertinent to point out that the second respondent has not satisfactorily established that he was paying the rent directly to the landlord, at any point of time. In the absence of any proof as to the payment of rental directly to the landlord by the second respondent, it has to be stated that the subtenancy stands proved. Needless to say that the sublease is always a matter for inference from the available evidence. Apart from the absence of any necessary documentary evidence, the second respondent as R.W.1 has stated in his evidence that he did not remember whether he paid the rental to the landlord, and hence, it can be safely held that it was only a sublease. Therefore, without any hesitation it can be held that the first ground namely the sublease stood proved.

9. The petitioner landlord sought for eviction on the ground of personal occupation also. His case was that he was carrying on his grocery shop in the rented premises; that he was in need of his property namely the premises in question, for running his business. It is an admitted position that the landlord was running a grocery shop in a rented premises. What was contended by the second respondent before the authorities below and equally

here also is that the claim of the landlord was without bona fide; but, it was based on oblique motive in order to obtain more rent; and that the landlord has not proved that there were compelling necessity of his being evicted from the rented premises; that the landlord as P.W.1 has also categorically admitted that his landlord has not issued any notice demanding eviction of the premises, and hence, the same cannot be a ground to evict the second respondent from the premises. The Court is of the view that these contentions do not merit acceptance.

10. To obtain a non-residential building, a landlord should prove the following:
(1) The building in question is non-residential in character;
(2) At the time of the filing of the eviction petition, the landlord was actually carrying on business;
(3) The landlord should not occupy any other non-residential building, owned by him;
(4) The claim of the landlord should be bona fide and should not be on oblique motives, like trying to raise rental.

11. In the instant case, the premises in question is a nonresidential one. The landlord was actually running a grocery shop in a rented premises on the date of filing of the petition. He was not occupying any other non-residential building of his own. The landlord in order to show the bona fide has to only establish the genuine present need for own occupation, and he need not prove that he was in danger of being evicted from the rented premises. The landlord is carrying on his business in a rented premises, and he has also deposed that his landlord has been demanding him to vacate the same. It is true that the landlord of the petitioner has not issued any notice calling for eviction. But, it did not mean that the dema nd for eviction was false. It is well settled position of law that in a case like this, the landlord who is carrying on his business in a rented premises, need not prove the danger of his being evicted from the said rented premises. In the instant case, the landlord has established the genuine present need for his own occupation.

12. The contention of the learned Counsel for the revision petitioners that the landlord has two other premises which are also available, and hence, the landlord could occupy any one of those premises cannot be countenanced both factually and legally. It is not in dispute that those two premises are actually occupied by two other tenants. Even assuming that other premises are available, then the choice is left to the landlord to decide as to which non-residential premises he should occupy, and the tenant cannot have any say in the matter. If the landlord is able to show the bona fide, then the tenant cannot dictate terms to the landlord that he should occupy some other building and not one mentioned in the petition.

13. For the reasons stated above, the judgments of the lower appellate authority do not require any interference, and both the findings have got to be necessarily sustained. Hence, both the civil revision petitions are liable to be dismissed. However, considering the fact that the

revision petitioners are conducting his business in the said premises, the Court is of the view that a reasonable time has got to be given for their eviction.

14. In the result, both the civil revision petitions are dismissed, confirming the judgments of the lower appellate authority. Six months' time is given for eviction. The amounts deposited by the revision petitioners before the lower Court would represent the damages for the use and occupation of the said premises. Hence, the landlord is entitled to withdraw those amounts. The petitioners should continue to deposit the existing rent before the lower Court on the fifth of every succeeding month for the said period. If the petitioners fail to vacate and hand over possession within the said stipulated period or if there is any default in making the deposit of the rental in the above line, the landlord is at liberty to initiate execution proceedings. No costs. Consequently, connected C.M.P. is closed.

Index: Yes
Internet: Yes

To:
1) The Rent Control Appellate Authority,
Principal Subordinate Judge, Dindigul,
2) The Rent Controller
Principal District Munsif, Dindigul.

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